PROCEEDINGS OF THE COMMON COUNCIL
IN REGULAR SESSION
TUESDAY, MARCH 14, 1995

CITY OF FORT WAYNE, INDIANA
JOURNAL OF THE PROCEEDINGS
OF THE COMMON COUNCIL

THE COMMON COUNCIL OF THE CITY OF FORT WAYNE MET IN THE COUNCIL CHAMBERS Tuesday EVENING March 14, 1995, 19__, IN Regular SESSION. PRESIDENT Donald J. Schmidt IN THE CHAIR, COUNCIL ATTORNEY Stanley A. Levine, AND Sandra E. Kennedy CITY CLERK, AT THE DESK, PRESENT THE FOLLOWING MEMBERS _____ VIZ:

BRADBURY Absent, EDMONDS Absent, GiaQUINTA Present
HENRY Present, LONG Present, LUNSEY Absent
RAVINE Present, SCHMIDT Present, TALARICO Present

ABSENT: 3

COUNCILMEMBER: Bradbury, Lunsey, Edmonds, _____

THE MINUTES OF THE LAST REGULAR February 28, 1995,
_____, 19__,
SPECIAL _____, 19__,

SESSION HAVING BEEN DELIVERED TO THE COUNCIL, WERE, ON MOTION, APPROVED AND PUBLISHED.

The City of Fort Wayne
Paul Helmke, Mayor

March 2, 1995

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, IN 46802

Dear Councilmembers:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-04-93, amending Chapter 157 of the Municipal Code of the City of Fort Wayne, Indiana, 1946.) The proposed ordinance is designated as:

Bill No. Z-95-02-06

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
2nd day of March 1995.

Council action on this recommendation must take place prior to:
June 25, 1995.

Carol Kettler Sharp

Carol Kettler Sharp
Secretary

/pb

XC: File

FACT SHEET

Z-95-02-06
BILL NUMBER

Division of Community Development & Planning

BRIEF TITLE	APPROVAL DEADLINE	REASON
Zoning Map Amendment From B-1-B to B-3-B		

DETAILS	POSITIONS	RECOMMENDATIONS
Specific Location and/or Address 2925 So Lafayette St	**Sponsor**	City Plan Commission
Reason for Project Used car sales and an auto clean up shop.	**Area Affected**	**City Wide** **Other Areas**
	Applicants/ Proponents	**Applicant(s)** Pete Wattley, 4126 Bowser Av **City Department** **Other**
Discussion (Including relationship to other Council actions) 20 February 1995 - Public Hearing (See Attached Minutes of Meeting) 27 February 1995 - Business Meeting Motion was made and seconded to return the ordinance to the Common Council with a DO NOT PASS recommendation. Of the six (6) members present, five (5) voted in favor of the motion, the Chair did not vote. Motion carried. Members Present: Linda Buskirk, Ernest Evans, Thomas Quirk, Dave Ross, Carol Kettler Sharp, Mel Smith Members Absent: James Hoch, Donald Schmidt, Vicky VerPlanck	**Opponents**	**Groups or Individuals** Leon Johnson, 432 Colerick Oscar Draughn, Wm Pk Assoc **Basis of Opposition** - this zoning classification would be a detriment to the residential integrity of the neighborhood
	Staff Recommendation	☐ For ☒ Against **Reason Against** -approval is not consistent with the neighborhood plan nor the Comp Plan for this area.
	Board or Commission Recommendation	**By** ☐ For ☒ Against ☐ No Action Taken ☐ For with revisions to conditions (See Details column for conditions)
	CITY COUNCIL ACTIONS (For Council use only)	☐ Pass ☐ Other ☐ Pass (as amended) ☐ Hold ☐ Council Sub. ☐ Do not pass

DETAILS

POLICY/PROGRAM IMPACT

Policy or Program Change	☐ No ☐ Yes
Operational Impact Assessment	

(This space for further discussion)

Project Start	Date	29 December 1994
Projected Completion or Occupancy	Date	2 March 1995
Fact Sheet Prepared by Patricia Biancaniello	Date	2 March 1995
Reviewed by Reference or Case Number	Date	6 March 1995

a. Bill No. Z-95-02-06 - Change of Zone #576
From B1B to B3B
2925 Lafayette Street

Pete Wattley, petitioner, appeared before the Commission. Mr. Wattley stated that he had sent a letter to Pat Fahey, Senior Planner for Land Use Management requesting that he waive the zoning requirement so that he could operate a used car sales lot on the property along with a car wash. He stated in his letter that in his opinion he saw permitted usage that is similar in ways concerning strictly automobile needs. His argument is that a service station is permitted to sell gasoline and do mechanical work, which he feels is a heavier use than what he is asking to do. He stated that he is trying to establish an automobile sales lot and detailing of automobiles on this property. He stated that the license that he holds from the state of Indiana which allows him to sell used cars also allows him to operate another business that is automobile related. He felt if the state of Indiana allows his license to cover both of his uses that the city would also see the sense of this use. Mr. Wattley then quoted from Mr. Fahey's letter in response to his. In the letter Mr. Fahey stated that the B-1-B does allow for a car wash, but does not allow for used car sales or automobile repair/body shop. He stated that he does not repair automobiles or operate a body shop. He stated in the second paragraph of his letter however, that in his opinion, (Mr. Fahey's) it was his determination that the primary use of the property would be for the sale of used automobiles, which is not a permitted us in the B1B district. Mr. Wattley stated that his primary business is washing cars. He stated that his business was formed in 1992 at 4132 S Clinton Street. He stated that in 1993 they decided to expand the business by adding used car sales, however they had to relocate to have enough space to do both. He stated that Mr. Fahey also stated that it would be necessary to have either 60 parking spaces for a car wash or request a variance from the Board of Zoning Appeals to eliminate that number of spaces. Mr. Wattley stated that Mr. Fahey stated that there are areas of B3 and M1 zoning in the immediate area which would accommodate the proposed use. He brought pictures to show the Commission of the property along Lafayette Street. He pointed out that even though they may be zoned correctly the property in the area are to small for his business. He then showed pictures of the property in question. He stated that it is suitable to his needs. The garage on the property has two overhead doors, it used to be a gas station, and it is laid out in a way that is more suitable for their needs. He stated that they are trying to take this property from a vacant building and upgrade it so that it will be an asset to the area. Mr. Wattley stated that this property is an eyesore and he is trying to upgrade the building and encourage development in the area.

Mr. Wattley then referred to the staff analysis. He stated that in the first paragraph it states that the property appears to have been a gas station. Mr. Wattley stated that it was used as a gas station. He stated that in the second paragraph it tells of the

types of businesses that are allowed in this zoning classification. He stated that the staff analysis states that the businesses allowed in this district, except for a filling station, would be that customers and activities normally take place inside a building and deal with new items as opposed to used items or repair. Mr. Wattley stated that the do not do any repair. He stated that they sell cars and clean them. Mr. Wattley stated that in the third paragraph of the staff analysis it speaks to the potential for this use to elevate noise levels, odors, and congestion that may not be directly compatible with surrounding areas of less intense residential use. He stated that he did not see how his use would do any of these things. He felt he use was less noisy and would not have the level of noise, odors or congestion as a gas station would. He stated that he felt that the reuse of this property as a viable business would be an asset to the area. He stated that this property and structure was designed to be used for some type of automobile business.

Leon Johnson, 432 Colerick St, appeared before the Commission in opposition to the rezoning and proposed use. Mr. Johnson stated that he had collected a petition signed by people who live in that area in opposition to these request. He stated that they have people who have lived in this area for many years and they have had other people petition for businesses in the area. He stated that the people in the area do sleep at night. He felt that Mr. Wattley was not telling the truth when he said there will not be any problems. He stated that with a car dealership it would bring load noises, congregation of young people, and possibly drugs. He stated that he was there as a grandfather and a parent to state that he definitely did not want the business located there. He stated that he felt if Mr. Wattley was given this zoning request it would cause the neighborhood to go completely to "pot" quickly. He stated that they have worked with Councilman Lunsey, and the neighborhood association to improve their properties, which they have done. He stated that they do not need any more rats, junk cars or loud boom boxes. He stated that they have small children in the area. He stated that they children play on the sidewalks and in the streets, and with this type of business they would have speeding cars using the streets.

Oscar Draughn, President of the Williams Park Association, appeared before the Commission. Mr. Draughn stated that they would like to maintain the neighborhood as it currently exists. He states that they work to keep the area the way it exists. He stated that they are not against Mr. Wattley improving his lifestyle, but they do not want something brought into the neighborhood that they do not want. He stated that he was speaking in behalf of the association as well as his neighbors who will directly affected.

Mary Morris, President of the Oxford Neighborhood Association appeared before the Commission. Ms. Morris stated that Mr. Wattley has been very cooperative in providing information regarding his request to the association. Ms. Morris stated that they are not opposed to business in the neighborhood. She stated that the thing

that they are opposed to is the actual zoning change. She stated that they are concerned to what would happen if Mr. Wattley sold the property. The zoning would still remain B3B and would allow for uses that could be highly detrimental to the neighborhood.

John Lehner, with the Fort Wayne Neighborhood Housing Partnership appeared before the Commission. Mr. Lehner stated that they have invested about 7 million dollars in residential redevelopment in the Oxford Neighborhood and surrounding neighborhoods. He stated that their concern is very similar to that of the Oxford Neighborhood in that increases the capacity of the property will substantially interfere with their ability to continue to market property. He stated that certain advances have been made along the Lafayette Corridor. He stated that specifically with Project Renew and the kinds of housing developments they have done along Lafayette creating those landscape buffers. He stated that they have acquired lots that are on Wildwood and started building lots on Wildwood and they have options on 155 county owned properties that are scattered throughout the neighborhood. He stated that to increase the zoning to allow for uses that may make it more difficult in terms of redeveloping residences in the Oxford and adjacent areas.

Frank Chandler, 3030 Lafayette Street, appeared before the Commission. Mr. Chandler stated that he lives across from this area and would hate to think that he would be subjected to looking out his windows and see used and/or junk cars across from him. He questioned how they were going to take in used cars and not do some repair on them.

In rebuttal Mr. Wattley stated that they would not generate any noticeable traffic in area. He stated that their hours would be 9 am to 6 pm. He stated that in the evening all of the cars would be put inside the bull pen. He stated that this property has a bull pen in the rear that would accommodate a dozen to a dozen and a half cars. He stated that they will not be repairing cars on the premises.

Mel Smith questioned if Mr. Wattley had considered requesting a variance for this property.

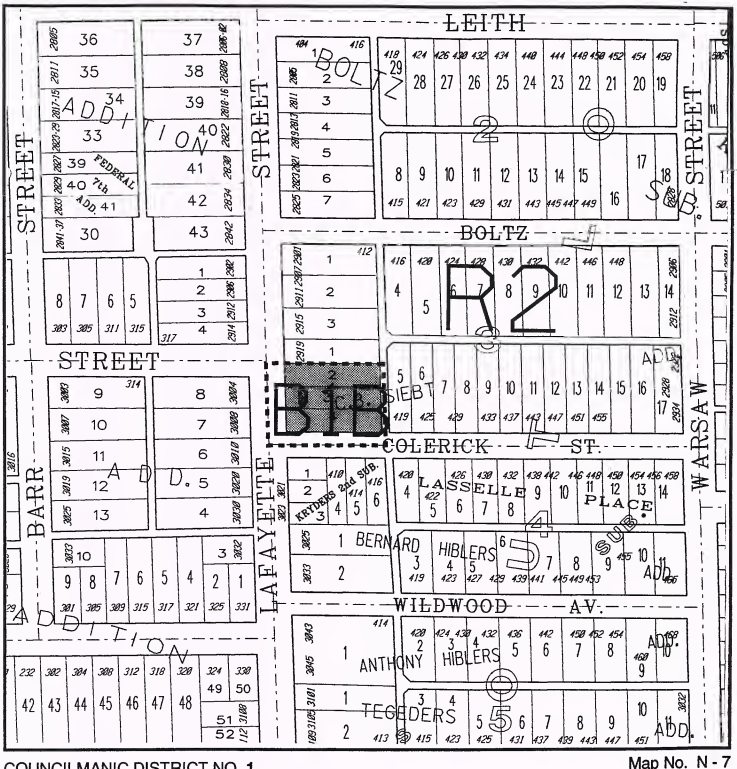
Mr. Wattley stated that his first choice would be to have the property rezoned.

Mel Smith stated that this is spot zoning. He stated that spot zoning by the Commission is rare.

There was no one else present who spoke in favor of or in opposition to the proposed rezoning.

REZONING PETITTION

AREA MAP **CASE NO. #576**



COUNCILMANIC DISTRICT NO. 1

Map No. N - 7
LW 1-22-95

R1	One-Family	**B1**	Limited Business	**M1**	Light Industrial
R2	Two-Family	**B2**	Planned Shopping Center	**M2**	General Industrial
R3	Multi-Family	**B3**	General Business	**M3**	Heavy Industrial
RA/RB	Residential	**B4**	Roadside Business	**MHP**	Mobile Home Park
PUD	Planned Unit Dev.	**POD**	Professional Office District		

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana on February 14, 1995 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-95-02-06; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on February 20, 1995.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this ordinance be returned to the Common Council with a DO NOT PASS recommendation based on the following "Findings of Fact".

(1) the grant will be injurious to the public health, safety, morals and general welfare of the community;

(2) the use or value of the area adjacent to the property included in the rezoning will be affected in a substantially adverse manner;

(3) the need for the rezoning does not arise from conditions peculiar to the property involved and the condition is not due to the general conditions of the neighborhood;

(4) the strict application of the terms of the zoning ordinance will not constitute an unusual an unnecessary hardship to this property;

(5) the grant interferes substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law; and,

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held February 27, 1995.

Certified and signed this
2nd day of March 1995.

Carol Kettler Sharp

Carol Kettler Sharp
Secretary

Pete Wattley, Norma Jean Woods, and Carolyn Mitchell, request a change of zone from B-1-B to B-3-B.

Location:	2925 South Lafayette Street
Legal:	S 27' of Lot 2, together with Lots 3 and 4 in Carl B. Seibt Add.
Land Area:	Approximately 0.33 acres
Zoning:	B-1-B
Surroundings:	North R-2 Residential South R-2 Residential East R-2 Residential West R-2 Residential
Reason for Request:	Used car sales and an auto clean-up shop
Neighborhood Assoc.:	Oxford Neighborhood Association
Neighborhood Plan:	As stated in the Oxford Neighborhood Plan, "In the case of Lafayette Street, which is highly residential in nature, further development should be restricted to no more intense uses than professional businesses. Traffic flow along this major transportation route makes it impractical for intense business development both because of its potential negative impacts on traffic flow and adjacent residences" (page 42). This area of the Oxford Neighborhood is not an area which the Plan recommended a zoning change (page 41). Based upon "the plan", Neighborhood Planning does not support this petition.
Comprehensive Plan:	The general land use policies of the Comprehensive Plan states that development proposals should be compatible with existing and planned land uses and should not establish an undesirable precedent in the area to be developed. This property is located in the Central Area. The goal of the Central Area is to maintain existing development, halt deterioration, and encourage reinvestment.

Planning Staff Discussion:

This site is located at the northeast corner of Lafayette Street and Colerick Street. It appears to have been used at one time for a filling station. It currently is the only non-residential zoning in the immediate area. There is B-1-B zoning approximately two blocks north at the intersection of Pontiac Street. Approximately two blocks to the south is a two block stretch of M-1 (Light Industrial) zoning.

The existing zoning is a "limited business" classification that would permit approximately 90 uses, including grocery stores, fruit and vegetable stores, beauty parlors, filling stations, restaurants, and other retail sales enterprises. Characteristics of these uses, except for filling stations, would be that customers and activities normally take place inside a building and deal with new items as opposed to used items or repair. Surrounding properties are usually only exposed to vehicular traffic entering or leaving the site, delivery vehicles and trash receptacles. The only uses allowed under B-1-B that are similar to the requested uses would be filing stations and car washes. The filing station use is predominately the retail sale of gas and other convenience products, and was not intended to support full automotive repair services. Car washes are similar in that they generally are limited to an exterior wash and wax, and may include some limited interior clean up. They generally do not include the full range of auto clean up operations such as engine degreasing, buffing, scratch removal etc. Additionally, a car wash is required to provide off street parking for 60 or more vehicles.

The requested B-3-B designation is a "general business" classification that is intended for more intense service oriented uses like auto sales and repair, sales of used merchandise, welding shops, arcades, welding shops, sheet metal shops, etc. Many of these uses would have a higher impact on the quality of life issues of the surrounding area. Inclusion of service and recreational uses under this classification increases the potential for elevated noise levels, odors, and congestion that may not be directly compatible with surrounding areas of less intense residential use.

The proposed operation would consist of both the sale of used vehicles and an auto clean-up service. Both of these uses would require a B-3 designation under the zoning ordinance. Used vehicles sales is an outside, land intensive use. Auto clean-up typically involves chemicals, noise producing equipment (vacuums, polishers etc.), and is clearly a service use. (The petitioner has indicated that their car clean-up operation includes interior and exterior cleaning, including underbody and engine de-greasing, buffing and shampooing.)

The site is approximate 146 X 100, or under a third of an acre. This is a relatively small site for the proposed combination of uses. Because of the small size, the businesses would be limited in the volume that they could handle. The danger to the area is not so much in terms of their proposed site development as it is in terms of the precedent that would be set for other properties. Additionally it would probably be very difficult to make the intended uses compatible with the character of the residential area, as the nature of the business demands public visibility for a number of parked cars.

There are two areas of concern that the staff particularly identified in the evaluation of this petition. Those concerns are the impact on existing residential uses and the safe efficient flow of traffic along this corridor. (A third issue was the importance of the character of development along this route contributing to a highly visible community image.)

Clearly Lafayette Street is a major state route into the city that carries high volumes of traffic, and the associated noise and safety concerns. As the major north bound route into the

downtown sector and beyond, traffic considerations along this corridor are of extreme importance. Efficient movement effects multiple issues ranging from public safety to environmental consequences. Land uses that encourage slower, or "cruising" types of traffic movements could create potential conflicts and lower the overall efficiency of the corridor for moving traffic.

The surrounding area is predominately viable housing stock. These residential areas consist of older dwellings and narrow streets. Staff clearly supports the reuse of this site, but would prefer to see it used for one of the many uses permitted under the current classification. Appropriate reuse could encourage additional reinvestment in the area, and could capitalize on the neighborhood market needs. The existing uses and zonings need to be encouraged and protected.

It has been suggested by staff and by the neighborhood plan that street frontages along this corridor should be used for the development of low intensity uses, which could serve as a limited buffer for the residential uses. While the neighborhood would prefer to see professional office type uses, staff acknowledges the possibility of a blend of office and light retail uses along this corridor. The unfailing belief for land uses along this corridor is clearly for lower intensity uses that can blend into the existing development, complimenting and encouraging revitalization and quality of life issues.

Recommendation: Do Not Pass for the following reasons:

1) Approval is not consistent with the neighborhood plan nor the Comprehensive Plan for this area.

2) Approval could be detrimental to property values and quality of life issues in the surrounding neighborhoods.

3) The highest or best use of the property is for the site to be re-used for currently permitted uses, allowing some buffering against non-compatible uses.

COMMUNITY & ECONOMIC DEVELOPMENT

MEMORANDUM

TO: City Council Members

FROM: Gary Stair, Director of Planning, Community and Economic Development

DATE: March 2, 1995

SUBJECT: Recommendation from Plan Commission

The attached land use petition has been reviewed by the Fort Wayne Plan Commission and forwarded to you for final action. The Plan Commission's recommendation on this case, made after public hearing and review, has been certified by the Commission's Secretary and is summarized on the attached "Fact Sheet".

Occasionally, there will be a significant delay between the time the petition is filed and when the Plan Commission certifies its recommendation and forwards the case to you. This delay occurs when a petition receives "Conditional Approval" -- approval subject to the petitioner fulfilling certain obligations. In such cases the Plan Commission's staff holds the petition until all conditions have been met by the petitioner. Once all conditions have been satisfied, the case is forwarded to you.

As always, if you have any questions concerning the attached case, please do not hesitate to call me or Pat Fahey of the Land Use Management staff at 427-1140.

/pb

1. Change of Zone - Bill No. Z-95-02-06

Amendment: From B-1-B to B-3-B

Location: 2925 S Lafayette St

Applicant: Pete Wattley

Proponents: Pete Wattley, 4126 Bowser Av

Opponents: Leon Johnson, 432 Colerick St
Oscar Draughn, President, Williams Park Association
Mary Morris, President, Oxford Neighborhood Assoc
John Lehner, with Fort Wayne Neighborhood Housing Partnership
Frank Chandler, 3030 Lafayette St

Summary of Discussion: This rezoning would allow the petitioner to develop the property for as a used car lot and an auto clean-up shop.

Staff Recommendation: Do Not Pass

Plan Commission Recommendation: Do Not Pass

Recommendation Given: February 27, 1995

Committee Session Date: March 14, 1995

The City of Fort Wayne
Paul Helmke, Mayor

March 2, 1995

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, IN 46802

Dear Councilmembers:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-04-93, amending Chapter 157 of the Municipal Code of the City of Fort Wayne, Indiana, 1946.) The proposed ordinance is designated as:

Bill No. Z-94-09-12

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
2nd day of March 1995.

Council action on this recommendation must take place prior to:
June 25, 1995.

Carol Kettler Sharp

Carol Kettler Sharp
Secretary

/pb

XC: File

FACT SHEET

Z-94-09-12
BILL NUMBER

Division of Community Development & Planning

BRIEF TITLE	APPROVAL DEADLINE	REASON
Zoning Map Amendment From R-3 to B-1-B		

DETAILS

Specific Location and/or Address

6430 West Jefferson Bl

Reason for Project

The applicant is proposing to demolish the existing office building on the site and build a new restaurant facility.

Discussion (Including relationship to other Council actions)

19 September 1994 - Public Hearing

(See Attached Minutes of Meeting)

26 September 1994 - Business Meeting

The petitioner asked for and obtained a deferral of action for 30 days.

24 October 1994 - Business Meeting

The petitioner asked for and obtained a deferral of action for 60 days.

9 January 1995 - Business Meeting

A deferral of action was given for another 30 days.

27 February 1995 - Business Meeting

Petition was withdrawn at the request of the petitioner's attorney.

POSITIONS	RECOMMENDATIONS
Sponsor	City Plan Commission
Area Affected	City Wide Other Areas
Applicants/ Proponents	Applicant(s) Quality Cooking Inc City Department Other
Opponents	Groups or Individuals Basis of Opposition
Staff Recommendation	☐ For ☐ Against Reason Against
Board or Commission Recommendation	By ☐ For ☐ Against ☐ No Action Taken ☐ For with revisions to conditions (See Details column for conditions)
CITY COUNCIL ACTIONS (For Council use only)	☐ Pass ☐ Other ☐ Pass (as amended) ☐ Hold ☐ Council Sub. ☐ Do not pass

DETAILS

Motion was made and seconded to return the ordinance to the Common Council as a WITHDRAWAL.

Of the six (6) members present five (5) voted for the motion, the Chair did not vote. Motion carried.

Members Present: Linda Buskirk, Ernest Evans, Thomas Quirk, Dave Ross, Carol Kettler Sharp, Mel Smith

Members Absent: James Hoch, Donald Schmidt, Vicky VerPlanck

POLICY/PROGRAM IMPACT

Policy or Program Change	☐ No ☐ Yes
Operational Impact Assessment	

(This space for further discussion)

Project Start	Date	17 August 1994
Projected Completion or Occupancy	Date	2 March 1995
Fact Sheet Prepared by Patricia Biancaniello	Date	2 March 1995
Reviewed by	Date	6 March 1995
Reference or Case Number		

a. Bill No. Z-94-09-12 Change of Zone #568
From R-3 to B-1-B
6430 W Jefferson Bl

Tom Niezer, attorney for the petitioners, Quality Cooking, appeared before the Commission. He stated that Quality Cooking is an Indiana Corporation that are presently under contract to purchase the property at 6430 W Jefferson Bl. He stated that one of the conditions preceding the buying of the property is obtaining a satisfactory rezoning of the site. He stated that Quality Cooking is one of the fastest growing restaurant franchise in the state. He stated that this business provides a carry out, dining room setting, which provides roasted chicken products, in a delicatessen setting. He stated that he had passed out a brochure to the Commission with background on Quality Cooking. He stated that there were area maps showing the location of the restaurant along Jefferson Blvd., and adjacent to the Covington Plaza Shopping Center. There was also a proposed floor layout for the Boston Chicken Restaurant, as well as the proposed signage alternatives, that have been used in other sites and will be considered used at this site. He stated that in considering the rezoning request state statute requires that they submit evidence for the record with respect to the conformity of the rezoning request with the Comprehensive Plan. Showing that current conditions and the character of current structures and uses are consistent with this rezoning request; show that this is the most desirable use for the land and show that this site achieves conservation of property values. He stated he believed that staff had commented on some, if not all, of the items favorable in the staff report. He stated that this property is completely surrounded by B2C - Regional Shopping Center uses, primarily Covington Plaza Shopping Center and the Villa Shoppes of Skinner-Broadbent on the other side of West Jefferson Blvd. He stated that they certainly are conserving property values by trying to bring the property into a more consistent usage with those property values and usages surrounding it. He stated that it is their contention that this rezoning is also the most desirable use for the land. He stated that they will even be making improvements to the land from both a concept of topography and site plan concept, which will make it more consistent than it is now. He stated that they feel that this plan and application is consistent with the City's Comprehensive Plan. This property is located in the west section of the City's Outer Ring. The purpose of that area is to contain urban growth, within the urban service area, this proposal does that. He stated that this proposal also meets many, if not all, of the applicable general land use proposals identified in the Comprehensive Plan. He stated that it is compatible with surrounding uses in the B2C classification. He stated that they are certainly not establishing an undesirable precedent. He stated that this proposal and the construction of the Boston Chicken Restaurant will not necessitate the construction of any new utility services by the City. He stated that they will be using and tapping into already existing utility services. He stated that the outlay of any capital money by the city is virtually "nil". He stated that he felt this

restaurant's offerings would be unique to the city. He stated that beyond the requirement of state statue this request also affords Boston Chicken and the city of Fort Wayne to improve two issues in the area of site design and traffic access. He stated that they are addressed at length in the staff comments. In the area of site design they have already had the opportunity to meet once and discuss their landscape design with Tom Cain and Pat Fahey. He stated that they have assured them that they will more than likely go ahead and consider many of the concepts that Tom Cain has asked regarding the property. He stated that they cannot keep all of the oak trees that are currently on the site. He stated that doing so would necessitate having one in the middle of the restaurant. He stated that with respect to traffic access they have provided the staff with an executed letter of intent between Boston Chicken and Covington Plaza Center Inc. He stated that 2 months ago they met with the city and presented them with a letter that stated that they agree to create an easement along the inner ring road serving Covington Plaza. He stated it is a private road, it is not dedicated to the city of Fort Wayne. He stated that since that time they have had three meetings with Driveway Subcommittee and at least one meeting with the Traffic Engineering Department. He stated that at last week's Driveway Subcommittee Meeting a recommendation was approved which shows the access as presented on the site plan. He stated that they have been able to secure the city's approval with respect to access. He stated that they believe that they have obtained Mr. Bobeck's approval as well to move forward. He stated that they will be furnishing, prior to next Monday, a signed easement agreement between Covington Plaza Center Inc., and Quality Cooking that will grant easement rights for this property. He stated that Boston Chicken represents a new outlet for Fort Wayne in its ever growing restaurant needs. He stated that there is no similar type of competition as far as they are concerned in the area. He stated that this proposal will contemplate a small but existing payroll of $300,000 to $400,000 per year, and a net investment of close to 3/4 of a million dollars. He stated that they would ask for the Commission's favorable recommendation.

Duane Bobeck, 3333 W Hamilton Road, president of Covington Plaza Center Inc., appeared before the Commission He stated that Covington Plaza owns the land on three sides of this site. He stated that they are in favor of the use. He stated that after they heard that Boston Chicken was interested they made a point of visiting some of their stores in other cities. He stated that they were very impressed with the quality of their operation. He stated that in the 1950's this property was donated to the Associated Churches of Fort Wayne. He stated that the Associated Churches then built an office building on the site for their own use. He stated because they were a church they did not need rezoning. He stated about 1980 they decided to move to the Foellinger Center and sold the property as a non-conforming use. During those 14 years they have talked to numerous people who wanted to buy the property to develop and use it in some way. He stated that it was his understanding that first the County Plan Commission and then the

City Plan Commission advised that it not be rezoned for commercial use with a cut on W Jefferson Blvd., because any cut would be too close to a major intersection. He stated that they have been informed over those years that if they would reach an easement agreement with the user to hook them into the perimeter road of Covington Plaza, then perhaps a commercial zoning could be granted. He stated that in the past they have had a series of requests that could not be allowed because they were already within the plaza and would have conflicted with existing operations. He stated that Boston Chicken is not a conflict and they would love to see them their and they have reached an agreement for an easement to connect into the perimeter road.

Steve Loggins, 4609 Fairfield Av, appeared before the Commission. Mr. Loggins stated that he was not opposed to Boston Chicken coming into this location. He stated that his concern is that when you are traveling west bound on Jefferson there is no way to get into the parking lot. He stated that you must go back east and pull into Boston Chicken's proposed parking lot. He stated that his concern is getting client's into the parking lot for his business.

There was no one else present who spoke in favor of or in opposition to the proposed rezoning.

215 East Berry Street, P.O.Box 2263
Fort Wayne, Indiana 46801-2263
219-423-9551, Fax: 219-423-8924

Barrett&McNagny
ATTORNEYS AT LAW

Thomas M. Niezer

VIA FACSIMILE AND U.S. MAIL
427-1132

February 21, 1995

Mr. Patrick L Fahey
Mr. Wayne E. O'Brien
Department of Community
and Economic Development
City of Fort Wayne
One Main Street
Fort Wayne, IN 46802

Re: Case No. 568; 6430 West Jefferson Blvd.; Quality Cooking, Inc.

Dear Gentlemen:

On behalf of Quality Cooking, Inc., I would request a withdrawal of rezoning petition 568 from further consideration by the City of Fort Wayne Plan Commission.

As you know, Quality Cooking, Inc. has been trying to negotiate an acceptable easement agreement with the owner of the Covington Plaza Shopping Center in order to provide suitable access to the 6430 West Jefferson property. While I believe we have given every effort to try and reach an accommodation with Covington Plaza Center, Inc., we have been unable to obtain an acceptable easement agreement.

The 6430 West Jefferson property is quite suitable for the type of restaurant proposed by Quality Cooking. However, without an acceptable easement agreement with respect to access, there is no need to further prolong this matter before the City Plan Commission. Nonetheless, I would request the withdrawal of the rezoning petition be granted to preserve Quality Cooking's ability to come back before the Plan Commission at a future date if we are able to negotiate an acceptable easement agreement.

My client and this office appreciates the efforts and cooperation shown by the Plan Commission and its staff and hope the opportunity arises to successfully conclude the siting of a new restaurant at a future date. Should you have any questions in regards to the enclosed, please feel free to call.

Very truly yours,

BARRETT & McNAGNY

Thomas M. Niezer

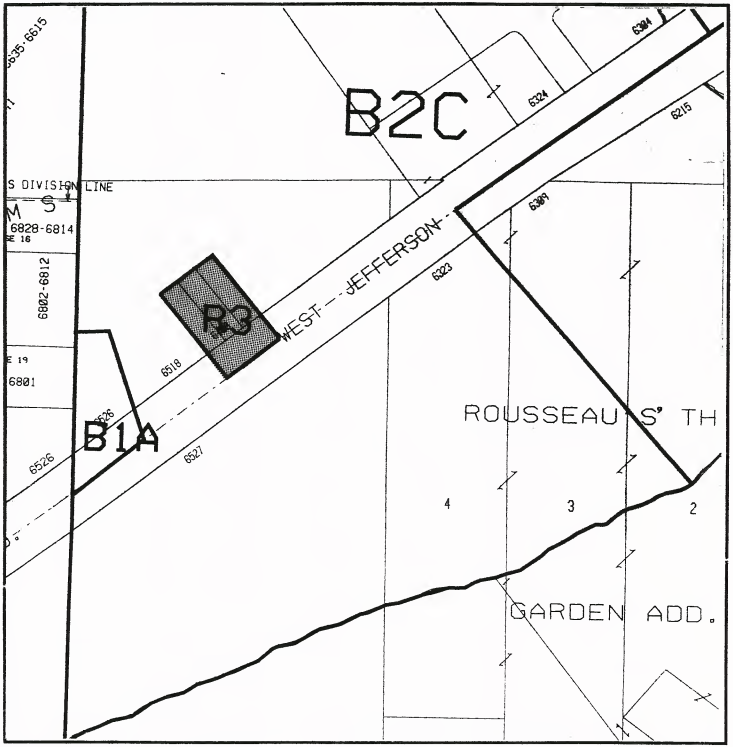
Thomas M. Niezer

TMN:gnc:37923
Enclosures

cc: O.J. Stocker
Gary Trent

REZONING PETITTION

AREA MAP **CASE NO. #568**



COUNCILMANIC DISTRICT NO. 4

Map No. D-7
LW 8-22-94

R1	One-Family	**B1**	Limited Business	**M1**	Light Industrial
R2	Two-Family	**B2**	Planned Shopping Center	**M2**	General Industrial
R3	Multi-Family	**B3**	General Business	**M3**	Heavy Industrial
RA/RB	Residential	**B4**	Roadside Business	**MHP**	Mobile Home Park
PUD	Planned Unit Dev.	**POD**	Professional Office District		

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on September 13, 1995 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-94-09-12; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on September 19, 1994.

WHEREAS, a letter requesting WITHDRAWAL of the proposed ordinance has been filed with the City Plan Commission.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that such proposed ordinance be withdrawn in accordance with the written request.

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held February 27, 1995.

Certified and signed this
2nd day of March 1995.

Carol Kettler Sharp

Carol Kettler Sharp
Secretary

Thomas M. Niezer, attorney, agent for Quality Cooking, Inc. request a change of zone from R-3 to B-1-B.

Location:	6430 West Jefferson Boulevard
Legal:	See file
Land Area:	Approximately 0.66 acres
Zoning:	R-3
Surroundings:	North B-2-C South B-2-C East B-2-C West B-2-C & B-1-A
Reason for Request:	The applicant is proposing to demolish the existing office building on the site and build a new restaurant facility.
Neighborhood Assoc.:	None
Comprehensive Plan:	No comment.
Neighborhood Plan:	No comment.
Landscape:	1) Although the proposed use is consistent with the character of surrounding properties, it is only through a voluntary effort by the petitioner that the quality of development will be of the same high level as that of the surrounding planned shopping center. There is the potential for this rezoning to result in site development inconsistent with the character of surrounding properties in the future, as our site development controls in B1B are related only to parking area development. In order for the site to fit well into its surroundings, I would suggest the following issues be addressed: A. Appearance of parking area from street view. B. Creating an obvious site entry point, reinforced through the landscape plan. C. Preservation of as many existing mature trees as feasible. D. Mitigation of the loss of existing mature trees with new trees. E. Definition of the site boundaries and orientation of visitors to the site. F. Softening the hard edges of the structures and pavements. G. Coordinating the landscape character of this site with that of the rest of Covington Plaza.

Planning Staff Discussion:

This parcel appears to be a legal non-conforming use, currently used as a real estate office. Site development consists of a typical low intensity single story residential looking structure, with a direct residential access to West Jefferson Boulevard.

In any rezoning petition, staff evaluates the petition against a criteria that includes the Comprehensive Plan; current conditions and character of uses and structures in the area; the most desirable use of the land; conservation of property values; and responsible development and growth.

The property is surrounded on three sides by the Covington Plaza Shopping Center. The east property line abuts an outlot that is currently being developed by Blockbuster Video, the west property line abuts a parking lot, and the north property line abuts the internal ring road for the shopping center.

The purpose of a planned shopping center is to encourage adequate commercial facilities at appropriate locations, and to provide a harmonious and functional relationship with the immediate surroundings and the community. Surrounded by a planned shopping center on three sides, at first glance it would seem appropriate to require this lot to become a part of that shopping center.

First glances, however, can be deceiving. When Covington Plaza was originally developed the subject parcel was not included, nor were any conditions placed mandating internal connections being provided to this site. Additionally, shopping centers in this market have typically developed with contractual limitations of use that may not be consistent with the forced inclusion of another parcel. The individual developers on the other hand are free to negotiate an arrangement, subject to Plan Commission approval of the modification to the shopping center plan.

Further, the submittal of a rezoning to a planned shopping center classification requires the inclusion of a traffic survey and a marketing study with a growth demographic analysis, which may cause delays and additional expenses to the petitioner and does not seem practical for such a small site. The shopping center submittal would also require 100% of the property owners to submit primary and secondary development plans. (Covington Plaza has multiple property owners at this time.)

Without extensive negotiations between the parties involved, and some potential additional expenses, this alternative is not the most efficient nor direct manner in which to allow commercialization of this parcel.

The bottom line then is to determine whether or not commercialization is appropriate under the established criteria, perhaps especially so since the parcel would not be included under the planned shopping center classification at this time.

Surrounded by existing commercial uses, it is difficult to argue that the proposed development would not be of a like nature. The concerns that do arise are site design/compatibility issues, and traffic safety issues.

West Jefferson Boulevard currently carries large volumes of traffic, with increases projected

for the future. Development along West Jefferson Boulevard has increased tremendously in the last decade. This marketing area now has major traffic attractions with planned shopping centers, Meijers and Lowes superstores, and major medical and office park development to the west. Traffic Engineering has provided us with the following figures:

- Traffic volumes in this area average approximately 35,830 vehicles daily. (Based on 1992 data projected through 1994.)

- As measured at the intersection of West Jefferson Boulevard and the entrance to the Village of Time Corners, accident experience has doubled between 1993 and 1994. Based on year to date experience, this intersection is now the second highest intersection for personal injury accidents.

These numbers show a safety concern in this area due to present traffic volumes. The addition of another dining establishment would draw additional vehicles into the area. As the petitioned property has limited frontage on Jefferson, if any access were allowed, it could create a potential safety problem due to the nearest of the access point to the shopping center, and the associated improvements needed. Safe driveway construction requires certain geometric designs, potentially including deceleration and acceleration lanes etc. In this case, the required improvements could extend beyond the limits of the property, and could create a confusing situation for motorists.

If, as has been previously discussed with the applicant, the property can arrange for an internal access to the planned shopping center that is acceptable to the Plan Commission, then staff would support the commercialization of this property. The requested B-1-B designation could permit approximately 90 different uses, with different traffic generation intensities. Without a guaranteed internal access, development of this site could be very detrimental.

Under the current, apparent legal non-conforming status, the existing structure could continue to be used for a low intensity office without placing any additional burden on the traffic safety issues. It is only when a change of use is contemplated that we become concerned about access demands.

The petitioners have meet with various staff members on different occasions to discuss their proposals. In these discussions they have clearly shown their intention of obtaining access rights from the Covington Plaza development, and relinquishing any rights to Jefferson Boulevard. These discussions were conditioned upon negotiating access rights with Covington Plaza, and obtaining acceptable access locations internally.

Staff would like to create a situation where both the city and the petitioner can win. With an appropriately located, guaranteed internal access point (or points) and the relinquishment of any Jefferson Boulevard access, we believe this to be an appropriate development.

We have discussed these concerns with the petitioners attorney, and have stressed the need to submit documentation of a binding internal access agreement. The petitioner requested a deferral at the September business meeting of the Plan Commission. As this analysis is finalized for distribution, those executed documents have not been submitted.

COMMUNITY & ECONOMIC DEVELOPMENT

MEMORANDUM

TO: City Council Members

FROM: Gary Stair, Director of Planning, Community and Economic Development

DATE: March 2, 1995

SUBJECT: Recommendation from Plan Commission

The attached land use petition has been reviewed by the Fort Wayne Plan Commission and forwarded to you for final action. The Plan Commission's recommendation on this case, made after public hearing and review, has been certified by the Commission's Secretary and is summarized on the attached "Fact Sheet".

As you will note, this request was <u>withdrawn</u> at the request of the petitioner. While the petitioner requested the withdrawal, the fact that the ordinance has already been introduced by Council, requires the petition to be returned to City Council for final disposition. We recommend that you approve the withdrawal as requested.

As always, if you have any questions concerning the attached cases, please do not hesitate to call me or Pat Fahey of the Land Use Management staff at 427-1140.

/kp

1. Change of Zone - Bill No. Z-94-09-12

Amendment: From R-3 to B-1-B

Location: 6430 W Jefferson Bl

Applicant: Quality Cooking Inc

Proponents: Tom Niezer, attorney for the developers

Opponents: None

Summary of Discussion: This rezoning would allow the petitioner to develop the property for a new restaurant.

Staff Recommendation: WITHDRAW

Plan Commission Recommendation: WITHDRAW

Recommendation Given: February 27, 1995

Committee Session Date: March 14, 1995

THE COUNCIL THEN ADJOURNED

CERTIFICATE

I hereby certify that I am the duly elected, acting and incumbent City Clerk of Fort Wayne, Indiana, and as such the custodian of the records of the Common Council of said City and that the above and foregoing is the true, full and complete record of the proceedings the Common Council of the City of Fort Wayne, Indiana, for its Regular Session, held on 14th day of March, 19 95, that the numbered ordinances and resolutions shown therein were duly adopted by said Common Council on said date and were presented by me to the Mayor of the City of Fort Wayne and were signed and approved or disapproved by said Mayor and on the dates shown as to each such ordinance and resolution respectively; and that all such records, proceedings, ordinances and resolutions remain on file and record in my office.

WITNESS my hand and the official seal of the City of Fort Wayne, Indiana, this 17th day of March, 19 95.

Sandra E. Kennedy

City Clerk